



Federal Communications Commission
Washington, D.C. 20554

July 17, 2018

NRJ TV Boston License Co, LLC
722 S. Denton Tap Road
Suite 130
Coppell, TX 75019

Re: Request for Waiver of Deadline to
Implement Shared Channel Operations
WMFP, Foxborough, MA
Facility ID No. 41436
LMS File No. 0000058243

Dear Licensee,

On July 11, 2018, NRJ TV Boston License Co, LLC (NRJ) submitted the above-captioned request for waiver (NRJ Waiver) for WMFP, Foxborough, Massachusetts (the Station) of its July 23, 2018, deadline to implement shared channel operations and to discontinue operations on its pre-auction channel (channel sharing implementation deadline).¹ For the reasons set forth below, we grant the request for waiver and extend the channel sharing implementation deadline to no later than September 6, 2018.

Background. Under our rules, winning bidder stations that elected in their incentive auction application the option to continue to broadcast by channel sharing² must implement shared channel operations and discontinue operations on their pre-auction channels no later than 180 days after receipt of the winning bid proceeds.³ Our rules also provide that a station may request a waiver of the channel sharing implementation deadline.⁴ All such requests for waiver will be evaluated to determine whether grant will delay or disrupt the post-auction transition schedule.⁵ A waiver is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.⁶

¹ See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786, 2813, para. 76 (MB & WTB 2017) (*Closing and Channel Reassignment Public Notice*); see also *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd 858, 879, para. 63 (MB 2017) (*Broadcast Transition Procedures Public Notice*); 47 CFR §§ 73.3700(b)(4)(ii).

² *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at Appendix A.

³ 47 C.F.R. 73.3700(b)(3)-(4); *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2813, para. 76; *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 879-80, paras. 63-64. NRJ was originally required to discontinue operations by January 23, 2018 but as described below, it received waivers of the channel sharing implementation deadline until July 23, 2018.

⁴ See *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2814, para. 81; *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 881, para. 69. A station that intends to channel share may request an additional 90-day waiver of the deadline (for a total of 180 additional days) using the same procedure. *Id.*

⁵ *Id.*

⁶ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown).

NRJ was previously granted two waivers extending its channel sharing implementation deadline to July 23, 2018.⁷ In support of its most recent request for waiver of the deadline, NRJ states that the Station was a winning relinquishment bidder in the incentive auction and will be sharing with WWDP(TV), Norwell, Massachusetts. NRJ states that it has taken all actions within its control to commence channel sharing on July 23, 2018. Specifically, NRJ has worked with WWDP to: (1) ensure that new encoders and other equipment in the signal path are in place and fully operational; (2) establish new telecommunications circuits to deliver the Station's signal to WWDP's transmitter site; and (3) establish fiber feeds to multichannel video programming distributors (MVPDs) that require an alternate delivery method.⁸ NRJ represents that it has also commenced consumer education notices and sent the required notices to all affected MVPDs in anticipation of a July 23, 2018, implementation date.⁹ Unfortunately, NRJ recently learned that despite its reasonable efforts, Verizon is unlikely to complete the installation of a required fiber optic circuit to DirecTV's local headend by the anticipated July 23, 2018, deadline.¹⁰ Absent an extension, NRJ predicts that DirecTV viewers would lose access to the Station's programming on July 23, 2018, until such time as the fiber link is completed.¹¹ NRJ states that it has been working with Verizon and DirecTV for several months to ensure a seamless transition to the shared facility. DirecTV advised NRJ on March 30, 2018, that DirecTV could not receive a good quality over-the-air signal from WWDP at its local headend. NRJ immediately solicited quotes from Verizon for an alternate feed to DirecTV's local headend.¹² The licensee of WWDP also requested to conduct its own testing from DirecTV's local headend, which is not regularly staffed and required a DirecTV employee to travel to Boston to provide access. Upon confirming that WWDP does not provide a good quality over-the-air signal to DirecTV's local headend, a new fiber optic circuit from Verizon was ordered in June 2018.¹³ NRJ maintains that Verizon still has not provided a date to install the fiber optic circuit or received a date for the installation of an internal connection from the Verizon fiber optic circuit to DirecTV.¹⁴

NRJ argues that a brief waiver of the channel sharing implementation deadline of an additional forty-five (45) days is in the public interest.¹⁵ First, NRJ maintains, waiver will facilitate the Station's ability to channel share successfully and without disruption which, NRJ argues, the Commission has recognized will promote longstanding policy goals for broadcast television, including localism, viewpoint diversity, and competition.¹⁶ If the Station commences channel sharing with WWDP before it has established a good quality signal to DirecTV, NRJ asserts DirecTV's subscribers will temporarily lose the ability to view the Station (which NRJ notes would be inconsistent with the Station's consumer education announcements which, based on NRJ's earlier expectations, have informed viewers that MVPD

⁷ See LMS File Nos. 0000034064 and 0000049506.

⁸ NRJ Waiver at 1.

⁹ *Id.*

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

subscribers will be able to watch the Station without interruption).¹⁷ NRJ concludes that delaying the commencement of channel sharing until the alternate signal is established will minimize such viewer disruption.¹⁸

NRJ also argues that grant of a brief 45-day waiver will not adversely affect the Commission's post-auction transition timeline.¹⁹ NRJ notes that the channel sharing arrangement will utilize existing broadcast facilities and that grant of this waiver will therefore not divert any engineering resources otherwise needed by other stations for their post-auction transition.²⁰ Aside from the fiber optic connection to DirecTV, NRJ states that all other equipment required to channel share is already installed and operational. Furthermore, NRJ maintains that it has determined that continued operation on its post-auction channel would not interfere with the repack of nearby stations since they will not transition until Phase 4, for which the testing period does not begin until June 22, 2019.²¹ Accordingly, NRJ concludes, providing the Station with 45 additional days to cease operations on its pre-auction channel and to transition to shared operations will not affect other stations' transition schedules.²² NRJ further argues that providing the Station with 45 additional days will not delay the launch of service by winning 600 MHz bidders given that the Station's RF channel (18) is within the post-auction broadcast television band.²³

Discussion. Upon review of the facts and circumstances presented, we find NRJ's request to extend the channel sharing implementation deadline until September 6, 2018, satisfies the requirements for a waiver. Based on the circumstances described by NRJ, we find that it would not be consistent with the public interest to require the Station to implement its shared channel operations by its current deadline. NRJ has demonstrated that unique technical challenges are likely to prevent a timely implementation of its shared operations. In addition, allowing NRJ additional time to implement will ensure a successful completion of its shared operations as well as preventing a disruption in service to some of its satellite viewers. NRJ has further demonstrated that grant of the waiver will not adversely impact the post-incentive auction transition as it is utilizing existing facilities and in-house staff to implement the shared operations and will not divert resources from repacked stations transition efforts. Staff has confirmed that allowing the Station to remain on channel 18 for an additional 45 days will not result in any impact on the phased post-auction transition schedule. Finally, because the Station is currently operating on channel 18, which will remain part of post-auction television band, continued use of its pre-auction channel will not adversely impact 600 MHz wireless licensee deployment plans. We caution, however, that further requests for waiver of the channel sharing implementation deadline will not be viewed favorably.

The above facts considered, NRJ TV Boston License Co, LLC's request for waiver **IS GRANTED** and the deadline to implement its shared channel operations and to discontinue operations on its pre-auction channel for WMFP, Foxborough, Massachusetts **IS EXTENDED** to September 6, 2018.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 2-3.

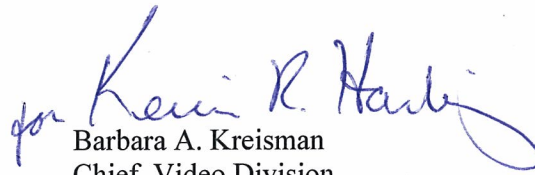
²¹ *Id.* at 3.

²² *Id.*

²³ *Id.*

Furthermore, NRJ TV Boston License Co, LLC, **MUST INFORM** all viewers of its change in planned implementation date and re-air all required viewer notices under 47 CFR § 73.3700(c). We also remind NRJ of its obligation to send revised notices to all impacted MVPDs, as required by 47 CFR § 73.3700(d)(3).

Sincerely,


Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Ari Meltzer, Esq.